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JAMES H. McKENNEY,

# SUPREME COURT

Of the United States.

OCTOBER TERM, 1900

No. ~~17,739~~ 266.

A. W. CORBUS, Appellant

vs.

THE ALASKA TREADWELL GOLD MINING COMPANY, Appellee.

Appeal From the U. S. District Court for Alaska.

# Brief for Appellant, A. W. Corbus

MALONY & COBB, of Counsel

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### Statement of the Nature and the Result of the Suit.

A. W. Corbus, the appellant, and complainant in the lower court filed his bill in equity against the appellee, the Alaska

Treadwell Gold Mining Co., to restrain and enjoin it from voluntarily applying for a license and paying the tax, provided for by the Act of Congress of March 3rd, 1899, entitled "An Act to define and punish crimes in the district of Alaska and to provide a code of criminal procedure for said district."

The bill, omitting formal parts is as follows:

1.

That the said Alaska Treadwell Gold Mining Company is a mining corporation incorporated under and pursuant to the laws of the State of Minnessota, and is engaged in mining and milling ore in the District of Alaska, on Douglas Island, Alaska, and has an office and agent in the District of Alaska, on the said Douglas Island, towit, one J. P. Corbus, who has the general supervision, control and management of the affairs of said company in the said District of Alaska.

2

That in the prosecution of said business of mining and reducing ore and extracting therefrom the gold therein contained, the said company owns and operates five hundred and forty stamps for the crushing and reduction of its said ore. Said company also under and pursuant to its said charter, owns a mercantile establishment and is engaged in the mercantile business to a large extent, towit, about the sum of fifty thousand dollars in volume per annum, which said mercantile establishment is situated on Douglas Island, Alaska, and said business is being run and engaged in in said District of Alaska.

3.

Your orator further says that the capital stock of said company is the sum of five million dollars, divided into two hundred thousand shares of the par value of twenty-five dollars per share, and your orator is the owner of one hundred shares of said capital stock; that the balance of said capital stock is owned and divided

among a large number of persons and corporations, nearly all of whom are non-residents of the District of Alaska, and are too numerous to all be made parties hereto, and this suit is brought by your orator in his own behalf and in behalf of all other stockholders of said company similarily situated to himself.

4

The general control of the affairs of said company is entrusted to a board of directors who reside in San Francisco, State of California, and who are non-residents of the District of Alaska; that the complete control and management of the affairs of said company in Alaska is under the supervision and control of its general superintendent and manager, J. P. Corbus.

5.

Your orator further says that the said company, acting by its said general superintendent in Alaska, which action is within the scope of the general authority and power conferred upon him, is purposing and intending, and unless restrained by this Honorable Court, will apply to this Honorable Court for a license, and tender and pay to the clerk of this court for such license, the sum of three dollars each upon said stamps, and the sum of two hundred and fifty dollars for a license to engage in said mercantile business for the year beginning July 1st, 1899, and ending June 30th, 1900, together with a clerk's fee of five dollars for issuing said license, making in all the sum of eighteen hundred and seventy-five dollars which said payment and expenditure of the moneys of said company said company is purposing and intending to make under and pursuant to the provisions of chapter 44 of the act of March 3rd, 1898, of the Congress of the United States, entitled "An Act to define and punish crimes in the District of Alaska and to provide a code of criminal procedure for said district.

6.

Your orator further shows and charges that the provisions of

said act requiring the payment of said tax of three dollars per stamp per year by said company, and the sum of two hundred and fifty dollars per annum for said mercantile establishment, is contrary to the Constitution of the United States, and null and void, and of no force and effect, for the reason that said tax is not apportioned according to the population of the citizens of the United States throughout the United States, and for the further reason that said tax is not uniform throughout the United States, but is a tax for national purposes, solely upon the citizens of the United States residing and doing business in the District of Alaska. Your orator further shows that said tax is exorbitant in its provisions, and so uncertain and indefinite in its terms as to said mercantile establishment, that it is impossible, without paying the maximum amount of tax therein laid upon such mercantile establishments, to certainly avoid the pains and penalties by said act attempted to be imposed, and if said act is complied with, it will result in the taking of the property of your orator and the others in whose behalf he brings this suit, for public purposes and without adequate compensation therefor, and without due process of law. And your orator further says that such tax so required as a condition precedent to authorize the engaging in business aforesaid is void and of no force or effect, because forbidden especially by the first clause of section eight of article one of the Constitution of the United States; by the fourth clause of section nine of article one of said constitution, and by the sixth clause of section nine of article one of said constitution. Your orator further shows that said pretended act of congress, so far as it attempts to lay and collect the said tax, is contrary to and forbidden by the fifth amendment to the Constitution of the United States, in that it deprives your orator and other persons similarly situated of their property, without due process of law, and takes private property for public uses, without just compensation, or without any compensation whatsoever, and is also forbidden by and is contrary to the first section of the fourteenth amendment to the constitution of the United States

7.

Your orator further shows that said business of quartz mining and operating a quartz mill and mercantile establishment are lawful and legitimate business enterprises which citizens of the United States and Alaska are entitled, under said constitution to pursue with the same privileges and amenities as citizens of the United States residing elsewhere.

Your orator further shows that this suit is not a collusive one, brought to confer jurisdiction of the case upon this court, of which it would not otherwise have cognizance; that your orator has not been able, because of the great distance at which the directors of said company reside, to request them to refuse to pay said tax and to apply for said license, but has made such request of the officers or agents of said company controlling its business in Alaska; but they have failed and refused not to make such application and to pay such tax, for the reason that, though they doubt the constitutionality of said law, the pains and penalties imposed by said act for the omission so to do, are so severe that said company and its said officers and agents fear, and have reason to fear the great loss and injury in defending prosecution that might be brought against it for the failure to comply with said law, that they deem it better to submit to the illegal tax, than to incur the consequences of the failure to comply with it That your orator is advised that there is no procedure provided by law whereby said company could test the validity of said law and the constitutionality of said tax, without incurring the pains and penalties therein provided for the violation thereof, inasmuch as the said act requires the voluntary payment of the tax imposed, under a penalty of heavy forfeiture and fines for the failure to make such voluntary payment. That the said company, in view of the foregoing, has refused and still refuses and intends omitting to compiy with complainant's demand to refuse to pay said tax, and has resolved and determined and intends to comply with all and singular the provisions of said chapter 44 of said act of congress, and to pay said tax upon its stamps

and upon its said mercantile establishment, amounting to the said sum of eighteen hundred and seventy-five dollars for the said year, and to continue the payment of a like or greater sum for each year hereafter.

9.

Your orator further shows that if said company and its officers, as they have proposed, and declared their intention to do shall pay said tax, the assets of the said company will be thereby diminished and lessened, as well as the dividends to be declared upon the stock thereof, and the value of the shares of said company, including the shares owned by your orator, and all others in whose behalf this suit is brought; and your orator further shows that this suit involves more than the sum of five thousand dollars; that unless the company should comply with said act, or this court grant the relief herein prayed for, the said company would be exposed to a multiplicity of suits and prosecutions for the violation of said act, and would be put to great expense and suffer irreparable injury in defending said suits and avoiding the fines and forfeitures provided by the said act, and its assets and the value of its shares would be thereby greatly lessened to the great and irreparable injury and damage to your orator and other shareholders in said company.

10.

Your orator further shows that this is a suit of a civil nature in equity and arises under the constitution and laws of the United States, and draws in question the validity of an act of congress and the authority exercised under the United States; and that your orator has no plain, speedy and adequate remedy at law.

WHEREFORE, your orator prays,

First: That it may please Your Honor to grant unto your orator a writ of subpœna issuing out of and under the seal of this Honorable Court, directed to the said Alaska Treadwell Gold Mining Company, commanding it, on a certain day, and under a severe

penalty, under the said writ, to be answered by and appear before Your Honor in this Honorable Court and then and there full, true and perfect answer to make of all and singular the premises, and further stand, perform and do such further orders and directions and decree as Your Honor shall deem meet and shall be agreeable to equity and good conscience.

Second: That said provisions of chapter 44 of the act of congress of March 3rd, 1899, requiring the said company to apply for a license and pay the said tax, as a condition precedent to engaging in its said business, be declared contrary to the provisions of the Constitution of the United States, and null and void.

Third: That this Court issue its most gracious writ of injunction, restraining the said company, its officers, agents and employees from applying for said license and paying said tax.

Fourth: That if the Court shall deem it proper until the final determination and hearing of this cause, that it make such order or orders as it may deem proper, whereby the said sum necessary in payment of said tax may be paid by said company into the registrar of the Court, to abide the final determination of this action and the adjudication of the validity of said statute.

Fifth: And your orator further prays for such other and further relief as in equity and good conscience it may show itself entitled.

[Printed record pp 1 to 5.]

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A restraining order was granted on motion of complainant [Pr. R. p 6–7] which restrained the defendant from paying the money mentioned in said bill upon the application for license but required that it be paid into the registry of the court to abide the result of the suit, and that upon payment into the registry of the

court, the license might be issued by the clerk. A copy of the complaint, motion and other proceedings were required to be served upon the U. S. District Attorney for Alaska. The defendant appeared in obedience to a subpœna and filed a general demurrer. [P. R. p 9]. The matter came on for hearing, and was argued with several other causes not now before the court, the U. S. District Attorney appearing as amicus curiae only. The Court sustained the demurrer, dismissed the bill, and ordered the money in the registry of the court to be covered by the clerk into the U S. treasury. (P. R. p 10). The Court's views are stated at length in an opinion filed in the case. [P. R. pp 11 to 17]. From the final decree dismissing his bill of complaint and ordering the money in the registry of the court covered into the treasury, appellant filed his petition for appeal and supersedeas, (P. R. p 17–18) which was allowed and supersedeas bond fixed at $2,000 (P. R. 18) citation was issued and served (P. R. p 19), assignment of errors filed (P. R. p 19-20), a supersedeas bond given (P. R. p 21), the transcript of the record filed here, within the time allowed by order of the court (P. R. p 21-22) and the cause is now here presented for correction and revision.

The assignments of error [P. R. p 20] go to the ruling of the court on the demurrer specifying errors as follows:

1st. In holding that the complainant had a full, complete and adequate remedy at law.

2nd. In dismissing plaintiff's bill.

3rd. In decreeing that the fund on deposit in the registry of the court be paid into the treasury of the United States.

4th. In not decreeing that plaintiff was entitled to the relief prayed for, and that the act of congress imposing a tax upon the defendant was unconstitutional and void.

As the principal question involved in this appeal will proba-

bly be settled by the decisions in several causes now under advisement by the court, a lengthy discussion of it is not deemed necessary here. We will only briefly indicate the theory upon which the plaintiff proceeded and upon which he believes he is entitled to recover, presenting the several questions ruled upon by the court in the order indicated in the assignment of error.

1.

## DID THE PLAINTIFF HAVE A PLAIN, SPEEDY, AND ADEQUATE REMEDY AT LAW?

The decision of the case, judging from the opinion of the court, rests upon the simple proposition that the plaintiff did have a plain, speedy, and adequate remedy at law. The Court assumes that it is "admitted in all the bills and protests now being considered, that the respective plaintiffs have a plain remedy at law by resisting the enforcement of the statute, but they contend that the fines and penalties imposed are so severe, they dare not pursue that course" [Pr. R p 16.] This may have been true with respect to the protests then being considered by the Court. It is certainly not true with respect to the bill in this case. The allegation is that the defendant "is purposing and intending, and unless restrained by this Honorable Court will" pay said sum of $1875. See paragraph 5 of bill SUPRA]. The allegations in the eighth paragraph of the bill, which the learned trial judge evidently had in mind when he used the language quoted, has application only to the reasons why the DEFENDANT refused to comply with the PLAINTIFF'S request, not to pay the tax. It was the defendant, not the plaintiff, who "dared not" take the risk of the fines and penalties imposed by the act for a failure to comply with its terms.

Again it is manifest that the remedy at law suggested by the learned judge, viz: to resist the payment of the tax, can have no application to the plaintiff in this suit. He was not taxed; no fines and penalties were threatened against him. The tax was laid

upon the defendant corporation, and those in control of its affairs in Alaska, were proceeding to pay out its funds rather than take the risk of the excessive fines, in the event the law was held valid, if they neglected a voluntary compliance with its terms. It is difficult to see how a stockholder could under this state of facts protect the funds of the company except by a procedure in equity.

The Court then attempts to draw a distinction between this case and that of Pollock vs. Farmers Loan and Trust Co., 156 U. S. 129 and 158 U. S 601. We fail to perceive the distinction. In each, the bill seeks to restrain the defendant corporation from misapplying trust funds; funds in the one case held by the company for the benefit of numerous persons for whom it acted in a fiduciary capacity, as well as its shareholders—in the other for the shareholders alone. The principal is identical, viz: the mis-application or wasting of a trust fund, But the case at bar is stronger than the case of Pollock vs. Farmers' Loan and Trust Co. in one respect. As was suggested by counsel for the government in that case, the bill did not allege that the corporation intended to pay the tax voluntarily. In that case, the rights of the plaintiff would be protected by the resistance of the defendant corporation to the illegal exaction of the government. In this case, the allegation is that the voluntary payment is purposed and intended and will be made by the Court.

We think it clear that the Court was in error in holding that the plaintiff had any remedy at law. The DEFENDANT could have refused to pay, and resisted a prosecution at law; but the PLAINTIFF had no such right. His only remedy was to restrain the wasting of the company's funds. The proceeding is one which this Court has in several cases upheld. THOMPSON VS. PAC. RY. CO. 9 WALL. 79. POLLOCK VS. FARMERS' L. & T. CO. 156 U. S. and authorities there cited.

In the latter case, Mr. Justice White in his vigorous dissent from the opinion of the majority of the Court, in contending that the bill should have been dismissed without passing on the merits

of the case, seems to rest his contention solely upon the ground that section 3226 of the Rev. Stat. of the U. S. gives a right of action for taxes paid under protest; and that section, 3224, forbids a suit for the purpose of restraining the assessment or collection of any tax. But we submit that neither of these sections has any application to the case at bar. The right of action given by section 3226, is given where the collector is proceeding to enforce the payment of the tax. In such a case it may be paid under protest and suit filed to recover it. Section 3224 is in pari materia. It simply forbids the courts restraining the assessment and collection of taxes, because a legal remedy is provided which the congress intended to be exclusive. But in the case at bar, no provision is made for the collection of the tax. The law simply said to the defendant corporation "abandon your business of mining and milling ore, or pay the government $1875 per annum. You are not forced to pay the sum. No collector will not seize your property if you fail to pay it. It's payment is optional. You make it voluntarily if you make it at all. But if you carry on your business without paying it you will be fined and imprisoned." It needs no argument to show that the sections quoted have no application to a case like this, or that the plaintiff had any legal remedy whatever, as will be apparent from a careful examination of the law in question.

II.

## THE COURT ERRED IN DECREEING THAT THE MONEY IN THE REGISTRY OF THE COURT SHOULD BE PAID INTO THE TREASURY OF THE UNITED STATES.

The Court sustained the demurrer for want of jurisdiction and then proceeded to render a decree which in effect gave the government the subject matter of the litigation. The tax was paid into Court, at the beginning of the suit, and the papers all served upon the U. S. Attorney, who declining to make the government a party nevertheless argued the case for the government, and the Court

rendered a decree that the money should be paid to the govern ment. This was erroneous on fundamental principles.

III.

This brings us to THE QUESTION in the case:

IS THE ACT OF CONGRESS IMPOSING A LICENSE TAX O OCCUPATIONS IN ALASKA, UNCONSTITUTIONAL AND VOID?

The law in question is found in sections 460, 461 and 463, the said act of March 3rd, 1899.

Section 460 is as follows: "That any person, or persons, corporation or company prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska shall first apply for and obtain license so to do from a District Court or a subdivision thereof in said District, and pay for said license for the respective lines of business and trade as follows, towit:" Then follows a list of 42 named callings and occupations embracing about all the useful and ordinary occupations of man outside of agriculture and the law. Among the occupations taxed are "mines: quartz mills, three dollars per stamp per year" and mercantile establishments, doing a business of $50,000 per annum, two hundred and fifty dollars," which are the taxes complained of in the bill.

Section 461, provided, "that any person, corporation, or company doing or attempting to do business in violation of the provisions of the forgoing section, or without having first paid the license therein required shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined, for the first offense, in a sum equal to the license required for the business, trade or occupation; and for the second offense

a fine equal to double the amount of the license required; and for the third offense, three times the license required, and imprisonment for not less than thirty days nor more than six months; provided, that each day that business is done or attempted to be done in violation of the preceding section shall constitute a separate and distinct offense."

Section 463, provides for the administration of the law, and requires that "all moneys received for license by him or them (Clerk of the Court) under this act shall be covered into the treasury of the United States under such rules and regulations as the Secretary of the Treasury may prescribe."

It will be observed in the first place that the law is not a police regulation. It is a burden laid on every useful occupation practicable in Alaska, from sawmills to steamships, from peanut stands to stamp mills. The money goes into the national treasury for the benefit, and as a part of the revenues of the general government. It is neither to be expended for the benefit of Alaska, nor held in trust for Alaska. There is no restriction nor regulation of the several lines of business had, or intended, nor are the lines of business taxed such, as require police regulation or restraint; nor is the exorbitant sum required—$1620, for instance on one stamp mill as in the case at bar, consistant with the idea of police regulation. It is therefore a revenue law, a tax pure and simple. (Cooley on Tax. p 408). According to Mr. Cooley, it is an excise tax (Cooley on Tax p 3) though it is not very material for the purposes of this discussion what the tax may be called. If it is void as an excise, duty, or impost, for want of uniformity, it is equally void as a direct tax because not laid in accordance with the rule of apportionment.

The tax by its terms is limited to business carried on in the District of Alaska. We shall assume as too plain for argument that had the law in question been passed with reference to one of

the States—If congress, for instance, had enacted, that any person, corporation, etc., carrying on any of the lines of business specified, in Massachusetts, or Maryland should first apply for a license, and pay the tax specified --it would have been void, because contrary to the first clause of Sec. 8 of Article 1 of the Constitution of the United States, if it was held to be a duty, import or excise; and contrary to the fifth clause of Section 9 of Article 1 of the Constitution, if a direct tax. This being a tax laid upon the people of Alaska, not for Alaska alone, but for the United States, the question narrows itself down to this:

## IS CONGRESS BOUND BY THE CONSTITUTION IN LAYING AND COLLECTING TAXES FOR NATIONAL PURPOSES IN ALASKA, AS IT WOULD BE IN ONE OF THE STATES?

In examining this question, it may be well to briefly review the legislation of congress relating to Alaska, and bearing on the question

By Article III of the Treaty of Cession, proclaimed June 20th 1867. the inhabitants of Alaska, (excepting uncivilized native tribes) were admitted to all the rights, advantages, and immunities of citizens of the United States. This provision we contend necessarily put in force in, and extended over Alaska, the Constitution of the United States, wherein alone, those "rights, advantages, and immunities" are set forth and guaranteed.

July 27th, 1868, "The laws of the United States, relating to customs, commerce and navigation" were extended to Alaska. (St. at L. vol. 15 Chap. 273. sec. 1.) Did the laws thus extended to Alaska include that part of the customs laws found in the Constitution? If it did not, where is the restriction found?

The next act of congress bearing on the question, was the Act of May 17th, 1884, [24 Stat. at Large, Chap. 53] commonly called the Organic Act, which established an organized government for

the District with an Executive and Judiciary departments but no legislative, the laws of Oregon, so far as practicable and not inconsistent with the laws of the United States being given instead. On that date then, if never before, Sec. 1891 of the Rev. Stat. of the United States became the law of Alaska, whereby the constitution was extended over and became the supreme law of the land in Alaska as well as in New York or Pennsylvania. The whole act as well as subsequent legislation, recognized the constitution as the law of Alaska. Again, it may be asked, is not the constitution the law of Oregon? Is there anything in the constitution that makes it locally inapplicable, and thereby excludes it from the laws of Oregon, extended to Alaska? The congress evidently considered either that the constitution was already in force, or that it was extended to Alaska by that act. For in the same section [par. 7] of this ACT in defining the exclusive jurisdiction of the District Court, we find such exclusive jurisdiction given "IN ALL CASES—involving the constitotionality of a law." If the constitution had no force or effect in Alaska, how could such a question arise? The constitutionality of a law can only be drawn in question in a court, where the constitutional limitations upon the law-making power exists. The only law making power in Alaska is the congress. The only law the conatitutionality of which can be drawn into question in Alaska is one passed by congress. And congress again recognized that the constitution was in full force and effect in Alaska in the ACT of June 6th, 1900, "making further provision for a civil government for Alaska," etc. In Sec. 367, of part III of that act, "so much of the common law as is applicable and not inconsistent with the constitution of the United States," etc., "is adopted and declared to be the law within the District of Alaska." We are not therefore met with the troublesome question as to whether or not the constitution extends to the Territories of the United States EX PROPRIO VIGORE. We have rather, a case where for sixteen years, at least, the constitution has been in full force and effect, recognized as the law by the congress, and courts established and invested with jurisdiction to pass upon the constitutionality of laws enacted by congress.

But it may be argued that congress itself extended the having constitution to Alaska, has the power to withdraw it; that an act of congress contravening the provisions of the constitution is an implied withdrawal of so much of the constitution as it contravenes. Merely to state such an argument, we believe, sufficiently refutes it. A constitution is in its very nature superior to the legislative, supreme in the land, ruling alike the governors and the governed. If it, or any of its provisions, can be set aside at the will of any power short of the people, then it is not a constitution at all. If congress can withdraw it, when its provisions are once extended to the territory, then the CONSTITUTION was never in force in such territory. What was supposed to be the constitution was merely a legislative enactment of the provisions contained in the instrument known elsewhere as the constitution. But in the territory, it is not, and never was the constitution. For the legislative power to withdraw or nullify the constitution and the constitution itself cannot co-exist. If the constitution exists it is supreme. If the instrument called the constitution is subject to legislative control, it is not the constitution in fact. We have been arguing the question on the hypothesis that congress had extended the constitution to Alaska the same as it has Arizona and New Mexico; that beingonce extended, it controlled congressional legislation in Alaska as well as in the States. But there is another view of the question, independent of the fact as to whether congress has or has not extended the provisions of the constitution to Alaska. That question may be stated thus:

## CAN CONGRESS ANYWHERE ENACT A LAW EXPRESSLY OR IMPLIEDLY FORBIDDEN BY THE CONSTITUTION?

While the constitution contains many express limitations upon the things that congress shall not do, it is something more than a summary of limitations upon governmental powers. Congress is the creature of the constitution, and has, and can exercise only such powers as are expressly or impliedly therein conferred upon

it. It is and can be nowhere supreme—it can nowhere exercise any power not conferred upon it by the instrument by which it was created and from which it derives all its powers. If it goes into a foreign land, it goes by authority of the constitution; if it acquires it under the same paramount authority. Congressional action in the territory of the United States must be under authority conferred by the constitution or such action has no warrant in law; for it has no authority not delegated by the constitution. This authority to deal with the territories is certainly very broad. It may give them an organized form of local self government, or govern them directly by congressional legislation. or not govern them at all. It may give their inhabitants such political rights as it sees fit, or in its discretion deny them all political rights, and this regardless of whether the inhabitants of such territory are citizens of the United States or not. The United States may (we concede for the sake of the argument) acquire new territory and hold such territory, and govern it without ever admitting its inhabitants to the rights and priveleges of citizenship. But when territory has been acquired and its inhabitants admitted to all the rights, priveleges, and immunities of citizens; and when it has been peopled by thousands of native born citizens who have emigrated to such territory from the various states of the union, then those fundamental rights of persons and property guaranteed by the constitution are held beyond the power of congress to deny, or modify. As was said by this Court in SCOTT VS. SANDFORD, 19 How. 393. "But the power of congress over the person or property of a citizen can never be a mere discretionary power under our constitution and form of government. The powers of the government and the rights and priveleges of the citizen are regulated and plainly defined by the constitution itself. And when the territory becomes part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with its power over the citizen strictly defined, and limited by the constitution from which it derives its existence, and by virtue of which alone it continues to exist and act as a government and sovereignty. It has no power

of any kind beyond it; and it cannot, when it enters a territory of the United States, put off its character, and assume discretionary or despotic powers which the constitution has denied to it. It cannot create for itself a new character separated from the citizens of the United States, and the duties it owes them under the provisions of the constitution. The territory being a part of the United States, the government and the citizen both enter it under the authority of the constitution, with their respective rights defined and marked out; and the Federal Government can exercise no power over his person or property beyond what that instrument confers, nor lawfully deny any right which it has reserved."

"The powers over persons and property of which we speak are not only not granted to congress, but are in express terms denied, and they are forbidden to exercise them. And this prohibition is not confined to the States, but the words are general, and extend to the whole territory over which the constitution gives it power to legislate, including those portions of it remaining under territorial government, as well as that covered by States. It is a total absence of power everywhere within the dominion of the United States, and places the citizens of a territory, so far as these rights are concerned, on the same footing with citizens of the United States, and guards them as firmly and plainly against any inroads which the general government might attempt, under the plea of implied or incidental powers."

This same doctrine is recognized in many other decisions of this Court, a few of which we will content ourselves with citing, Mormon Church vs. United States, 136, U. S. I; National Bank vs. Yankton Co. 101, U. S. 129; Ins. Co vs. Canter I Pet. 511: United States vs. Grettiot, 14 Pet. 526; Cross vs Harrison, 16 How. 164; Murphy vs. Ramsay, 114 U. S. 15.

In the latter case, the Court say: "The personal and civil rights of the inhabitants of the territories are secured to them, as to other citizens, by the principles of constitutional liberty, which restrain all the agencies of government, state and national; their

political rights are franchises which they hold as privileges in the legislative discretion of the United States."

This brings us back to the law in question, and the constitutional power of the congress to lay and collect taxes for the National Government. It is the greatest power, affecting the citizen, that the government has. It bears not upon his political rights or status, but upon his property. It is a property right. that is affected. And when congress lays its hand upon the property of the citizen and takes it for the use of the government, it must find its warrant for so doing in the constitution, whether that property be situated in a territory or in a State. Wherever it be, the citizen's right to, and in, his property, is alike under the shield of the constitution, and beyond the reach of arbitrary confiscation or illegal exaction. If confiscation or exaction of the means of the citizen is sought under the guise of a tax, it must be a tax authorized by the constitution. That instrument expressly confers upon congress the power of taxation without limitation as to amount, or as to the objects to be taxed; but along with the power conferred the limitation is imposed. If it is a duty, impost, or excise, it must be uniform throughout the United States; if it is a direct tax it must be laid by the rule of apportionment. And this limitation being for the protection of the property rights of the citizen is as as binding in the territories as in the States. Otherwise it necessarily follows, that congress may impose such taxes upon Alaska for the benefit of the National Government as will result in confiscating all the property of its inhabitants and to that extent decrease the burdens of government to the rest of the people of the United States. This burden, the constitution, in effect, provides, shall be borne equally and uniformly by all the people. No tax shall be laid on one portion of the people that is not laid upon all. As was said by Chief Justice Marshall, in LOUGHBROUGH VS BLAKE, 5 WHEAT. 319. "The power, then, to lay and collect duties, imposts, and excises may be exercised, and must be exercised throughout the United States. Does this term designate the whole or any particular portion of the American Empire? Certainly this

question can admit of but one answer. It is the name given to our great republic, which is composed of states and territories. The District of Columbia or the territory west of the Missouri is not less within the United States than Maryland or Pennsylvania; and it is not less necessary, on the principles of our constitution, that uniformity in the imposition of imposts, duties, and excises shall be observed in the one than in the other."

This is the rule of natural justice; it is the rule of the constitution. To hold that this constitutional rule is not binding upon congress in laying and collecting the national revenues in Alaska, is to break down every safeguard of the citizen in Alaska, in the enjoyment of his property, that is thrown round him by the constitution, and place every dollar that he owns at the disposal of congress, according to its pleasure. Nay, more, personal rights—the right of the citizen to life, liberty, and the pursuit of happiness, are not more sacredly guarded by the Supreme Law of the land than are the rights of property. If the latter fails, the former are swept away. Congress may deny us the right of trial by jury, may quarter soldiers upon us in time of peace, may invade any one of the private rights of citizens of Alaska, which the constitution places beyond its reach in the States.

The view here contended for is not in conflict with the right of congress to lay a local tax for local purposes upon a Territory or District. This we may concede it may do, occupying as it does, the place of a local legislature for such Territory or District, as well as being a national legislature for national purposes. But there is a distinction to be observed between legislation in its capacity of a local legislature, and legislation enacted in its capacity as the national congress. Taxation in the one case would be a local burden for a local purpose limited by the local necessities. In the other, it is the burden of the national taxes laid in one locality and on one part of the people with greater weight than on the rest—a violation of the rule of uniformity.

We have not deemed it necessary or proper in this brief, to

do more than outline the principles of law contended for, for the reason that before this case can be submitted, the question here presented will have been before the Court on briefs and arguments of the ablest counsel of the nation. In view of this fact, we deem any more extended discussion superfluous. We submit the case in the confident hope that no mere technicality will prevent the Court from passing upon the merits of the case, and that the blight which has been laid upon the business and prosperity of this new northern land, in the form of a tax under which more than forty dollars per capita per annum, IN ADDITION TO THE ORDINARY TAXES OF THE NATIONAL GOVERNMENT, are exacted for the benefit of the National Treasury, will be forever removed.

W. W. DUDLEY,
L. T. MICHENOR
Attorneys for Appellant, A. W. Corbus.

MALONY & COBB,
Of Counsel.